

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ANDRZEJ OSTROWSKI,

Plaintiff,

- v -

AMERICAN SAFETY INDEMNITY COMPANY,

Defendant.
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ORDER

CV-07-3977 (DLI)(VVP)

Pursuant to an agreement between counsel, the court has reviewed *in camera* the documents itemized as number 5 through 11 on the defendant's privilege log to determine whether the attorney client and work product privileges have been properly asserted. In conducting that review the court has read and considered the cases cited by the plaintiff – *Plimpton v. Massachusetts Mut. Life Ins. Co.*, 855 N.Y.S.2d 544 (1st Dep't 2008); *OneBeacon Ins. Co. v. Forman Int'l, Ltd.*, No. 04 Civ. 2271, 2006 WL 3771010 (S.D.N.Y. Dec. 15, 2006); *Brooklyn Union Gas Co. v. American Home Assur. Co.*, 23 App. Div. 3d 190, 803 N.Y.S.2d 532 (1st Dep't 2005) – which stand generally for the proposition that those privileges do not apply to communications made in the ordinary course of an insurer's business, particularly those relating to coverage decisions. The documents reviewed by the court fall comfortably within the protection of both privileges asserted by the defendant. They do not relate to coverage decisions, but rather constitute communications between attorneys and their client concerning anticipated and ongoing litigation. The privileges have been properly asserted and the motion to compel their production is accordingly denied.

SO ORDERED:

Viktor V. Pohorelsky

VIKTOR V. POHORELSKY
United States Magistrate Judge

Dated: Brooklyn, New York
May 23, 2008